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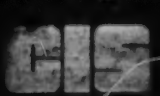

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REPORT
101-555

PROVIDING FOR THE SETTLEMENT OF WATER RIGHTS CLAIMS OF THE FALLON PAIUTE SHOSHONE INDIAN TRIBES AND FOR OTHER PURPOSES

OCTOBER 25 (legislative day, OCTOBER 2), 1990.—Ordered to be printed

Mr. INOUYE, from the Select Committee on Indian Affairs, submitted the following

REPORT

[To accompany S. 3084]

The Select Committee on Indian Affairs, to which was referred the bill (S. 3084) to provide for the settlement of water rights claims of the Fallon Paiute Shoshone Indian Tribes and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill as amended do pass.

TITLE I—FALLON PAIUTE SHOSHONE INDIAN WATER SETTLEMENT

PURPOSE

The purpose of S. 3084 is to provide for the settlement of the claims of the Fallon Paiute Shoshone Indian Tribes against the United States for the failure of the United States to carry out the obligations authorized in various acts of the Congress, including Public Law 95-337.

BACKGROUND

The history of the reservation of the present day Fallon Paiute Shoshone Tribes begins with allotments made from the public domain to certain Paiute and Shoshone Indians under the authority of the General Allotment Act of 1887. In 1890, fifty allotments of 160 acres each were made, and in 1893 and 1894, 146 additional allotments of the same amount of acreage were made. These allot-

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ments, totaling more than 31,000 acres, were for the most part situated within what later was to become the first major Federal reclamation project in 1902, the Newlands Project.

During the period (1906–1908) immediately following the authorization and implementation of the Newlands Project, contracts were entered into pursuant to which 186 individual Indian allottees would release their original 160-acre allotments and receive in lieu thereof, 10-acre allotments of fully irrigable land with completed irrigation facilities and water rights to be served by the Newlands Project. The Newlands Project was the first reclamation project to be authorized by the Congress in the West. Prior to the creation of the Newlands project (1902) the tribe had 30,000 acres carved out of their reservation, so that the Newlands project could be built. In exchange for the lands, an order of the Department of the Interior in April of 1907 reserved an area of 4,640 acres (later known as the original Fallon Reservation) on behalf of Indians who had relinquished their original allotments and such other Indians who might later be found to be entitled to allotments. These lands were to have been served with water for irrigation out of the Newlands Project and that water was to have been made available to them in perpetuity at no cost to the tribes. However, the lands that were made available to the tribes were not irrigable, and to compound matters further, the water from the Newlands Project was never forthcoming.

Later, irrigable lands were added to the reservation to make a 5,400 acre reservation, and these lands were to be served by the Newlands Project. Again, the water was not forthcoming. In 1978, Congress enacted Public Law 95–337, which recognized the failure of the United States to perform its 70-year-old contractual obligations, and provided for the addition of another 2,700 acres to the reservation. Public Law 95–337 directed the Department of the Interior to reclaim the land and bring 1,800 acres into cultivation. In 1990, some remedial work is just beginning on the first addition of 5,400 acres, and nothing has been done to fulfill the commitments that were made in the 1978 Act.

Summary of Major Provisions

Rather than continue to charge the Department of the Interior with the responsibility of fulfilling the commitments of Public Law 95–337 and earlier commitments of the United States, S. 3084 establishes a settlement fund in the amount of $43,000,000, so that the Fallon Paiute Shoshone Tribes may have the financial capability to undertake the work (rehabilitation and betterment of the existing irrigation system on the reservation and the acquisitin of lands with water rights or the acquisition of water rights) that was to have been carried out by the United States. Authority is also provided to expend interest accruing from the investment of the principal of the settlement fund for the purposes of providing tribal governmental services and facilities and for tribal economic development, including the development of long-term, profit-making opportunities for the tribes and their members, and the development of employment opportunities for tribal members. No more than twenty percent of the interest accruing on the principal of the

Fund may be expended for purposes of per capita distribution, and no more than 20 percent of the principal of the Fund may be used for the acquisition of lands with water rights, the acquisition of water rights, or the rehabilitation and betterment of the reservation's irrigation system. Any funds withdrawn from the principal must be restored to the principal.

The tribes are charged with developing a plan, in consultation with the Secretary of the Interior, for the investment, management, administration and expenditure of monies in the Fund and for the rehabilitation and betterment of the existing irrigation system on the reservation. The Secretary of the Interior may assist the tribes in the rehabilitation and betterment of the irrigation system.

To assure that there is no expansion of water use in an already strained watershed, S. 3084 imposes limitations upon the use of water rights that are acquired under the authority of the Act. The Secretary of the Interior is authorized and directed to reimburse non-Federal entites for reasonable and customary costs for the delivery of Newlands Reclamation Project water to serve water rights added to the reservation, and to enter into renewable contracts for the payment of such costs. The purposes for which water may be used include irrigation, fish and wildlife, municipal and industrial, recreation, water quality, or any other beneficial use subject to the applicable laws of the State of Nevada. The provisions of S. 3084 do not affect the jurisdiction of the tribes or the State of Nevada over the use and transfer of water rights within the Fallon reservation or off the reservation. S. 3084 authorizes the tribes to acquire water rights or land for the purposes of consolidating reservation landholdings or water rights, including those held in trust; eliminating fractionated heirship interests in reservation lands or water rights, including those held in trust; providing land or water rights for any tribal program; improving the economy of the tribes and the economic status of tribal members through the development of industry, recreational facilities, housing projects or other means; general rehabilitation and enhancement of the total resource potential of the reservation. Title to any lands or water rights acquired by the tribes within the counties of Churchill and Lyon in the State of Nevada are to be held in trust by the United States for the tribes.

In exchange for the above referenced benefits, the tribes agree to release any and all claims against the United States resulting from the failure of the United States to comply with section 7 of Public Law 95-337; to dismiss with prejudice, claims in *Northern Paiute Nation v. United States*, Docket No. 87-A, United States Claims Court; to dismiss without prejudice, claims in *Pyramid Lake Paiute Tribe of Indians v. Lujan*, No. R-85-197 (D.Nev.) and objections to the Operating Criteria and Procedures for the Newlands Project adopted by the Secretary of the Interior of April 15, 1988; and to develop and implement a plan for the closure of the TJ drain system.

With the exception of its responsibilities under specific enumerated sections of S. 3084, the United States is relieved of any liability regarding the investment, management or use of monies from the Settlement Fund by the tribes, or the implementation of the provisions of S. 3084.

Section by Section Analysis of Title I

Section 101 sets forth the short title of the Act, making clear that the Act is to be cited as the Fallon Paiute Shoshone Indian Tribes Water Rights Settlement Act of 1990.

Section 102(A) provides authority for the establishment of a fund in the Treasury of the United States to be known as the Fallon Paiute Shoshone Tribal Settlement Fund.

Section 102(B) authorizes appropriations in the amount of $43,000,000 for the Fallon Paiute Shoshone Tribal Settlement Fund, to be appropriated in the following manner: $3,000,000 in fiscal year 1992; $8,000,000 in each year for fiscal years 1993, 1994, 1995, 1996 and 1997.

Section 102(C)(1) outlines the purposes for which interest accruing from the investment of the principal of the Fallon Paiute Shoshone Tribal Settlement Fund may be expended, and provides that the purposes set forth in section 102(C)(1) are the only purposes for which such interest income can be expended.

Section 102(C)(2) provides that no more than 20 percent of the principal of the Fallon Paiute Shoshone Tribal Settlement Fund may be withdrawn, and if principal is withdrawn, it may be used only for the purposes of the rehabilitation and betterment of the irrigation system on the Fallon Paiute Shoshone Indian Reservation, not including lands added to the Reservation pursuant to the provisions of Public Law 95–337; for the acquisition of lands, water rights or related property interests located outside of the Fallon Paiute Shoshone Indian Reservation from willing sellers, and for the improvement of such lands so acquired; acquisition of individually-owned land, water rights or related property interests on the Fallon Paiute Shoshone Indian Reservation from willing sellers, including those held in trust by the United States. Section 102(C)(2) further provides that any amounts withdrawn from principal must be restored to the principal from interest accruing from the investment of the remaining principal. Section 102(C)(2) recognizes that the expenditure of funds for the purposes outlined in section 102(C)(1) may require a larger investment than would be immediately available if only income earned from the investment of the principal were to be applied. Thus, while there is no limitation on the time within which the principal must be fully restored, it is the intent of the Committee that to the maximum extent feasible, no funds be withdrawn from the principal, and to the extent that such withdrawals are necessary, that the principal be restored at the earliest possible time.

Section 102(D) provides authority for the Fallon Paiute Shoshone Tribes to invest, manage, and use the monies appropriated to the Fallon Paiute Shoshone Tribal Settlement Fund for the purposes set forth in section 102(C)(1) in accordance with the plan developed in consultation with the Secretary of the Interior under section 102(F).

Section 102(E) provides that upon the request of the Fallon Paiute Shoshone Tribes, the Secretary of the Interior is directed to invest the sums deposited in, accruing to, and remaining in the Fallon Paiute Shoshone Tribal Settlement Fund in interest-bearing deposits and securities in accordance with the Act of June 24, 1938,

52 Stat. 1037, as amended. Section 102(E) further provides that all interest earned on such investments shall be added to the Fallon Paiute Shoshone Tribal Settlement Fund.

Section 102(F)(1) authorizes the Fallon Paiute Shoshone Tribes to develop a plan, in consultation with the Secretary of the Interior, for the expenditure of the funds in the Fallon Paiute Shoshone Tribal Settlement Fund, and to submit the plan to the Secretary. The plan would outline in specific detail the tribes' proposals for carrying out the purposes of section 102(C)(1) and their proposals for the expenditure of funds to carry out those purposes. It is anticipated that from time to time, the tribes would revise and update the plan in consultation with the Secretary.

Section 102(F)(2) provides that the plan authorized in section 102(F)(1) is to include a description of a project for the rehabilitation and betterment of the existing irrigation system on the Fallon Indian Reservation, including measures to increase the efficiency of irrigation deliveries. The section provides that the Secretary of the Interior may assist in the development of the project. It is anticipated that the tribes would apply their best efforts toward implementing the project within four years of the time when the appropriations authorized in section 102(B) become available for obligation.

Section 102(F)(3) makes clear that until the tribes develop a plan for the expenditure of funds for the purposes outlined in section 102(C)(1), the Secretary of the Interior and the Secretary of the Treasury shall not make any disbursements to the tribes from the Fallon Paiute Shoshone Tribal Settlement Fund.

Section 102(G) provides that the provision of section 6 of Public Law 93-134, 87 Stat. 468, shall apply to any funds which may be distributed per capita under section 102(C)(1)(c). It is the intent of the Committee that per capita distributions shall be made from income earned on the investment of the principal of the Settlement Fund only, and that the tribes' plan authorized under section 102(F)(1) would identify the purposes for which per capita distributions would be made, and a time frame for such distributions. The Committee strongly encourages the tribes to identify a date certain when per capita distributions will cease, and to provide that the percentage of the Fund set aside for that purpose be allocated to other purposes.

Section 103(A) provides that all lands, water rights, and related property interests acquired under section 102(C)(1)(e) and 102(C)(1)(f) within the counties of Churchill and Lyon in the State of Nevada are to be held in trust by the United States for the Fallon Paiute Shoshone Tribes as part of the Fallon Paiute Shoshone Indian Reservation, provided that no more than 2,415.3 acres of lands so acquired, and no more than 8,453.55 acre feet per year of water rights so acquired are to be held in trust by the United States and become part of the tribes' reservation.

Section 103(B) provides that any lands acquired under section 102(C)(1)(e) or 102(C)(1)(f) are to be subject to the provisions of section 20 of the Act of October 17, 1988, 102 Stat. 2485.

Section 103(C) sets forth limitations on the total annual use of water rights appurtenant to the Fallon Paiute Shoshone Indian Reservation which are served by the Newlands Reclamation

Project, including Newlands Reclamation Project water rights added to the Fallon Paiute Shoshone Indian Reservation under section 103(A), whether used on the Fallon Paiute Shoshone Indian Reservation or transferred and used off the Reservation pursuant to applicable law. Section 103(C) provides that the total annual use of such water rights shall not exceed the sum of 10,587.5 acre feet of water per year, which is the quantum of water rights served by the Newlands Reclamation Project appurtenant to the Fallon Paiute Shoshone Indian Reservation lands that are currently served by irrigation facilities; and the quantum of active Newlands Reclamation Project water rights currently located outside of the Fallon Paiute Shoshone Indian Reservation that may be added to the Reservation under section 103(A) or water rights which are acquired by the Secretary and exercised to benefit reservation wildlife areas. Section 103(C) further provides that the requirements of section 103(C) are not to take effect until the tribes agree to the limitations on annual use of water rights set forth in that section.

Section 103(D) authorizes and directs the Secretary of the Interior to reimburse non-Federal entities for reasonable and customary costs for delivery of Newlands Reclamation Project water to serve water rights added to the Fallon Paiute Shoshone Indian Reservation under section 103(A) and to enter into renewable contracts for the payment of such costs.

Section 103(E) provides that subject to the limitation on the quantum of use of water rights set forth in section 103(C) and state law if applicable, all water rights appurtenant to the Fallon Paiute Shoshone Indian Reservation that are served by the Newlands Reclamation Project, including Newlands Reclamation Project water rights added to the Reservation under section 103(A), may be used for irrigation or any other purpose.

Section 103(E) also provides that nothing in section 103(E) is intended to affect the jurisdiction of the tribes and the State of Nevada, if any, over the use and transfer of water rights within the reservation or off the reservation, or to create any express or implied Federal reserved water right.

Section 103(F)(1) authorizes the Fallon Paiute Shoshone Tribes to acquire by purchase, by exchange of lands or water rights, or interests therein, including those held in trust for the tribe, or by gift, any lands or water rights, or interests therein, including those held in trust, located within the Fallon Paiute Shoshone Indian Reservation, for any of the following purposes: consolidating reservation landholdings or water rights, including those held in trust; eliminating fractionated heirship interests in reservation lands or water rights, including those held in trust; providing land or water rights for any tribal program; improving the economy of the tribe and the economic status of tribal members through the development of industry, recreational facilities or housing projects; and general rehabilitation and enhancement of the total resource potential of the tribes' reservation, provided that water rights are to be transferred in compliance with state law, if applicable.

Section 103(F)(2) provides that title to any lands or water rights, or interests therein, acquired by the Fallon Paiute Shoshone Tribes within the counties of Churchill and Lyon in the State of Nevada

authorized in section 103(F)(1) is to be held in trust by the United States for the Fallon Paiute Shoshone Tribes.

Section 104(A)(1) provides that in addition to the conditions on the disbursement of funds from the Fallon Paiute Shoshone Tribal Settlement Fund contained in section 102(F)(3), the Secretary of the Treasury and the Secretary of the Interior are not to disburse any monies from the Fallon Paiute Shoshone Tribal Settlement Fund until such time as the following conditions have been met: the Fallon Paiute Shoshone Tribes have released any and all claims the tribes may have against the United States resulting from any failure of the United States to comply with section 7 of Public Law 95-337, 92 Stat. 457; the Fallon Paiute Shoshone Tribes have dismissed with prejudice their claims in *Northern Paiute Nation v. United States*, Docket No. 87-A, United States Claims Court; the Fallon Paiute Shoshone Tribes have agreed to accept and abide by the limitation on use of water rights served by the Newlands Reclamation Project on the Fallon Paiute Shoshone Indian Reservation as required by section 103(C); and the Fallon Paiute Shoshone Tribes have dismissed, without prejudice, their claims in *Pyramid Lake Paiute Tribe of Indians v. Lujan*, No. R-85-197 (D.Nev.), provided that such dismissal shall not prejudice in any respect, the right of the tribes to object to revisions, if any, of the Operating Criteria and Procedures for the Newlands Reclamation Project adopted by the Secretary of the Interior on April 15, 1988, or to assert that such Operating Criteria and Procedures should be changed due to new information, changes in environmental circumstances, changes in project descriptions or other relevant considerations, in accordance with the requirements of all applicable court decrees and applicable statutory requirements; and the tribes agree to be bound by a plan developed and implemented by the Secretary in accordance with section 106 of this Title.

Section 104(A)(2) provides that should the Congress fail to appropriate the funds authorized in section 102(B), it shall be deemed that the conditions of the Act have not been satisfied, and the Fallon Paiute Shoshone Tribes may rescind their release of claims under sections 104(A)(1)(a) and 104(A)(1)(b) and 104(A)(1)(d) and 104(A)(1)(e) and their agreement under section 104(A)(1)(c).

Section 104(A)(3) provides that upon the appropriation of funds authorized in section 102(B) and the allocation of such funds to the Fallon Paiute Shoshone Tribal Settlement Fund, section 7 of Public Law 95-337, 92 Stat. 457, is repealed.

Section 105(A). Section 105(A) provides that except with regard to the responsibilities assumed by the United States under section 102(E) for the investment of sums in interest-bearing deposits and securities, the United States shall not bear any obligation or liability regarding the investment, management or use of funds in the Settlement Fund by the Fallon Paiute Shoshone Tribes.

Section 105(B). Section 105(B) provides that except with regard to the responsibilities assumed by the United States under section 102(B), section 102(F)(3), section 103(A), section 103(D), section 103(F)(2), section 104(A)(1) and section 106, the United States shall not bear any obligation or liability for the implementation of the provisions of the Act.

Section 106(A) provides that the Secretary, in consultation with the tribes and in accordance with applicable law, is to develop and implement a plan for closure, including if appropriate the modification of components, of the TJ drain system, including the main TJ drain, the TJ-1 drain and the A drain and its sublaterals, in order to address any significant environmental problems with that system and its closure.

Section 106(B) provides that the plan shall include measures to provide necessary substitute drainage in accordance with Bureau of Reclamation standards for reservation lands in agricultural production as of the 1990 irrigation season that are served by the system, unless the tribes and the Secretary agree otherwise.

Section 106(C) provides that implementation of the plan is not to interfer with ongoing agricultural operations.

Section 106(D) provides that the United States is to bear all costs for developing and implementing the plan authorized in section 106(A).

Section 106(E) provides authority for the appropriation of such sums as may be necessary to implement the requirements of section 106.

Section 107 sets forth the definitions of the terms "Fallon Paiute Shoshone Tribal Settlement Fund", "income", "principal", "Reservation", "Secretary" and "tribal members" as those terms are used in Title I.

Legislative History of Title I

S. 3084 was introduced on September 20, 1990 by Senator Reid for himself and Senator Inouye and was referred to the Select Committee on Indian Affairs. S. 3084 was ordered reported by the Select Committee on September 25, 1990.

TITLE II—TRUCKEE-CARSON-PYRAMID LAKE WATER SETTLEMENT

Purpose

Title II concerns the apportionment and use of water from two rivers, the Truckee and Carson, that arise in California near Lake Tahoe and flow into western Nevada. The circumstances behind the title are unusually complex, involving interstate water apportionment, management of Federal water storage and diversion facilities, protection and restoration of wetlands and endangered and threatened fish species, and the settlement of Indian tribal claims to water and other interests.

Background and Need

1. PHYSICAL SETTING

The Truckee and Carson rivers run generally parallel to each other in an easterly direction commencing in California near Lake Tahoe and terminating within closed basins in Nevada. The Truckee's natural course is from Lake Tahoe into Pyramid Lake; the Carson River flows into the Stillwater Wildlife Management Area and Carson Sink.

California and Nevada both make extensive use of the two rivers' water. California uses Truckee River water at its headwaters, Lake Tahoe, and downstream to the interstate border, near Farad. A private utility, Sierra Pacific Power Company, has hydroelectric facilities in California and Nevada on the Truckee above Reno. Nevada makes use of Lake Tahoe in its portion of the Tahoe basin. The Truckee is the principal source of water for irrigation, municipal, industrial and domestic uses in the Reno-Sparks metropolitan area and provides water to the Newlands Reclamation Project, near Fallon, Nevada. The Carson River provides water for irrigation and some municipal use in California, and is extensively used for irrigation in Nevada. The Carson is the principal source of water for the Newlands Reclamation Project.

2. INTERSTATE ALLOCATION

California and Nevada have contested allocation of the Truckee and Carson rivers since the 1800's, with the most heated controversy involving the Truckee system. Much of the debate has been fueled by Federal government efforts to secure water for its interests in Nevada, first for the Newlands Reclamation Project, and later to remedy the environmental impacts of that project.

In the 1950's, the States began negotiation of an interstate compact for allocation of the rivers' waters, ultimately reaching agreement in 1968. Nevada ratified the compact in 1969; California did so in 1970. The States have operated in voluntary compliance with the Compact's terms since that time.

The Department of the Interior and Department of Justice opposed Congressional ratification of the Compact. The United States objected to Compact provisions binding the United States to the Compact's allocations and charging Federal uses to the State where they are made.

Between 1971 and 1979, Nevada and California Congressional representatives offered six different bills seeking Congressional ratification of the Compact. None received a hearing. During the 1st Session of the 99th Congress, the Committee on Energy and Natural Resources and the Select Committee on Indian Affairs held hearings, but took no other action on S. 1558, in many respects, a predecessor to this title. During the 2nd Session of the 99th Congress, the Senate Judiciary Committee held hearings, but took no further action on S. 2457, a bill which included only matters related to interstate allocation. In the closing days of the 99th Congress, the Senate considered an amendment offered by Senator Laxalt to an appropriations bill that would have addressed interstate allocation. Senator Laxalt ultimately withdrew his amendment.

The States have been unable to achieve Congressional ratification of the Compact principally because of concerns expressed by the Pyramid Lake Paiute Tribe and the United States that the Compact would conflict with their efforts to secure water to repair the Newlands Project's environmental damage at Pyramid Lake and to protect other Federal interests.

3. TRUCKEE RIVER WATER USE

A. Newlands reclamation project

The Newlands Reclamation Project is at the center of most of the intra- and interstate controversies addressed by title II, including particularly the status of Pyramid Lake fisheries and the Lahontan Valley wetlands.

The Newlands Reclamation Project, one of the earliest projects built by the Bureau of Reclamation, supplies water to irrigate approximately 60,000 acres of land near Fallon, Nevada. Most of the land is used for irrigated pasture or alfalfa production. Current estimates of gross farm income from the Newlands Project is $20.5 million annually, with net income estimated at $9.2 million. Agriculture represents approximately ten percent of the Fallon-area economy.

The original Newlands Project plan contemplated irrigation of about 200,000 acres, however the total irrigated area has never exceeded about 65,000 acres. The Project relies on a combination of Truckee and Carson river water. Lake Tahoe and Lahontan Reservoir are the two main storage features of the Newlands Project. A small dam on the Truckee River outlet to Lake Tahoe controls the top 6.1 feet of the lake, providing about 740,000 acre-feet of storage. Lahontan Reservoir, on the Carson River, has a storage capacity of approximately 317,000 acre-feet.[1] Agricultural drainage from Newlands Project lands flows to wetland areas known generally as the "Lahontan Valley wetlands," an area that includes the Stillwater Wildlife Management Area, Stillwater National Wildlife Refuge, and Carson Lake and Pasture.

The Newlands Project's Truckee River water is diverted out of the Truckee basin by the Truckee Canal, which begins at Derby Dam (about 20 miles downstream of Reno) and continues to Lahontan Reservoir on the Carson River. A small portion of the diverted Truckee water is released from the Truckee Canal within the Truckee basin to irrigate lands near Fernley, Nevada. Surplus flows and drainage waters in this area contribute to the State of Nevada's Fernley Wildlife Management Area.

The amount of water available for diversion at Derby Dam varies both annually and seasonably. This is a function of annual precipitation in the Sierra Nevada, operation of storage reservoirs in the Truckee River Basin, and upstream water supply and demand patterns, particularly in the Truckee Meadows area, which includes Reno and Sparks in Washoe County, Nevada.

The amount of water diverted at Derby Dam is a function of water demands of the Newlands Project and the portion of that demand that can be satisfied by water from the Carson River system. The amount of water required for delivery to Project lands

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[1] A number of reservoirs have been constructed in the Truckee River drainage, primarily as features of two Federal reclamation projects: the Truckee Storage and Washoe projects. Boca Reservoir, part of the Truckee Storage Project, is located on the Little Truckee River and has a capacity of 40,000 acre-feet. The Washoe Project includes stampede Reservoir, also on the Little Truckee River; Prosser Creek Reservoir, on Prosser Creek, and Marble Bluff Dam and Fishway on the Truckee near Pyramid Lake. Donner Lake stores 9,500 acre-feet and is operated by the Sierra Pacific Power Company and the Truckee-Carson Irrigation District. Independence Lake, owned by Sierra Pacific Power, stores 17,500 acre-feet.

is a function of the number of irrigable water-righted acres actually being irrigated and the water duty established for each acre. Water duty for a given parcel of land is based on its designation as either bench or bottom land. The number of acres being irrigated results from decisions being made by individual farmers.

The amount of water supplied to meet water duty demands is a function of the efficiency of the irrigation water distribution system. Improving irrigation water distribution system efficiency would reduce the diversion requirements from the Truckee River, but would also reduce drainage flows reaching Lahontan Valley wetlands. Newlands Project efficiency average about 55 percent between 1981 and 1985.

B. Pyramid Lake reservation and fisheries

In 1859, the Secretary of the Interior reserved 475,000 acres of land surrounding and including Pyramid Lake and the Lower Truckee River for the Pyramid Lake Paiute Tribe. This area was the historic homeland of the Pyramid Lake Tribe and, prior to construction of the Newlands Project, supported abundant populations of fish upon which the tribe relied for consumption and commerce. Two fish species were, and remain, of primary importance to the tribe: the cui-ui *(chamistes cujus),* a unique type of sucker fish found only in Pyramid Lake, and Lahontan cutthroat trout *(salmo clarki henshawi),* a large species of trout, with closely related strains found in several lakes and rivers in west-central Nevada and east-central California. Both fish species evolved to spawn in the Truckee River and require cool water for successful reproduction.

Pyramid Lake evaporates approximately four feet per year, roughly 440,000 acre-feet. Between 1925 and 1967, more than 50 percent of the flow of the Truckee River, an average of approximately 260,000 acre-feet per year, was diverted at Derby Dam to the Newlands Project. The level of Pyramid Lake dropped—some 40 feet between 1920 and 1938—reducing the surface area by 20,000 acres and forming a delta which prevented the trout and cui-ui from reaching their spawning grounds in the Truckee River. The original strain of Lahontan cutthroat trout in Pyramid Lake became extinct by approximately 1940. A closely related strain of Lahontan cutthroat trout was subsequently introduced to the lake. The cui-ui was delared "endangered" under the Endangered Species Act in 1967. The Lahontan cutthroat trout has been declared a "threatened" species under the same Act.

The impacts of Newlands Project diversions on the Pyramid Lake fishery triggered protracted and repeated litigation by the Pyramid Lake Paiute Tribe and the United States against the Newlands Project's operator, Truckee-Carson Irrigation District, and virtually every user of Truckee River water in Nevada and California.

The Tribe has been increasingly successful in its efforts to increase Truckee River flows. A Federal court-ordered administrative process, known as "OCAP" ("Operating Criteria and Procedures") has begun reducing Newlands Project diversions from the Truckee. That same administrative process has required the Newlands Project to increase its operating efficiency, significantly reducing

project drainage and spills that once sustained the Lahontan Valley wetlands.

C. Truckee River water rights

Trukee River water rights are governed by a 1944 federal court decree which, in turn, incorporates an earlier operating agreement. The certainty of these rights has been challenged repeatedly by the Pyramid Lake Paiute Tribe and the United States through efforts to secure water for Pyramid Lake fisheries.

i. Orr Ditch decree

In 1913, the United States initiated a suit of quiet title to Truckee River water rights in Nevada, *United States* v. *Orr Water Ditch Company*, (hereafter "*Orr Ditch*").[2] Trial took place between 1919 and 1921. The final decree in the proceeding was issued in 1914.[3] The government's principal purpose in the action was to establish a water right for the Newlands Project and for irrigation on the Pyramid Lake Reservation. No reserved rights for sustenance of the Pyramid Lake fishery were claimed or awarded.

ii. Truckee River agreement

A key element of the *Orr Ditch* decree is the Truckee River Agreement of 1935, which was adopted by the court as a part of the decree. The Truckee River Agreement is essentially an operating agreement for the Truckee negotiated by the major water users on the Truckee.

The Truckee River Agreement specifies flow rates that must be maintained in the Truckee near Floriston, California. The "Floriston Rates" were first established in 1908 in an agreement between the Floriston Pulp and Paper Company and the Truckee River General Electric Company, the corporate predecessor of Sierra Pacific Power Company. The Floriston Rates required that, if minimum natural Truckee River flows dropped below a certain point, water would be released, if possile, from Lake Tahoe to maintain flows. In 1915, Reclamation obtained Lake Tahoe Dam from Sierra Pacific's predecessor through a consent decree that obligated the government to adhere to the Floriston Rates. In 1962, Reclamation assigned operation of Lake Tahoe Dam to the Truckee-Carson Irrigation District.

The Truckee River Agreement established maximum levels for Lake Tahoe storage, and laid the foundation for construction of Boca Reservoir to create additional storage in the Truckee System. The Agreement provided that Floriston Rates could be met through

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[2] In 1925, the United States brought an action for adjudication of Carson River water rights. A final decree was entered in 1980. *United States* v. *Alpine Land and Reservoir Company*, 503 F. Supp. 877 (D. Nev. 1980), *aff'd* 697 F.2d 851 (9th Cir. 1983), *cert. den.* 104 U.S. 193 (1983).

[3] The *Orr Ditch* decree awarded the United States a water right with a 1859 priority date for irrigation of approximately 5,800 acres on the Pyramid Lake Reservation. For the Newlands Project, *Orr Ditch* decreed to the United States a right with a 1902 priority date to divert Truckee waters at Derby Dam at the rate of 1,500 cubic feet per second for irrigation of 232,800 project acres, for storge at Lahontan Reservoir, for power generation and for other municipal and domestic purposes. This diversion is subject to such control, disposition and regulation as the [United States] may make or desire, provided that the amount of this water allowed or used for irrigation shall not exceed, after transportation loss and when applied to the land, 3.5 acre feet per acre for the [project] bottom lands, nor 4.5 acre feet per acre for the [project] bench lands.

releases from both Lake Tahoe and Boca Reservoir, but limited release to only that quantity of water required to provide Floriston Rate flows.

iii. Reserved rights for Pyramid Lake

In 1973, the United States, subsequently joined by the Pyramid Lake Paiute Tribe, brought suit against all persons claiming water rights to the Truckee River and its tributaries in Nevada. The suit sought additional water from the Truckee for the purpose of preserving Pyramid Lake and its fisheries. The Government and Tribe argued that the *Orr Ditch* decree only quantified the Pyramid Lake Reservation's right to water for agricultural purposes. In 1983, the United States Supreme Court rejected that claim. *Nevada* v. *United States*, 463 U.S. 110 (1983). In a unanimous opinion, the Court held that the jurisprudential doctrine of *res judicata* barred the United States and the Tribe from litigating the reserved right claim against those parties who had relied on the *Orr Ditch* decree.

In a concurring opinion, Justice Brennan noted that the District Court had found that one of the purposes for establishment of the Pyramid Lake Reservation was "to provide the Indians with access to Pyramid Lake . . . in order that they might obtain their sustenance. at least in part, from these historic fisheries." Justice Brennan explained that:

> As a consequence, the Tribe retains a *Winters* right, at least in theory, to water to maintain the fishery, a right which today's ruling does not question. To some extent it may be possible to satisfy the Tribe's claims consistent with the *Orr Ditch* decree—for instance, through judicious management of the Derby Dam and Lahontan Reservoir, improvement of the quality of the Newlands Project Irrigation works, application of heretofore unappropriated floodwaters, or invocation of the decree's provisions for restricting diversions in excess of those allowed by the decree.

Nevada v. *United States*, 463 U.S. at 145.

In 1975, the Pyramid Lake Tribe received a payment of $8.5 million in connection with the Tribe's claim against the United States for failure to assert a claim for water rights for the Pyramid Lake fishery.

The Committee observes that enactment of this title and, indeed, years of discord and litigation involving users of the Truckee River probably could haver been avoided had the United States pursued and secured water rights needed to sustain the Pyramid Lake fishery. In retrospect, it is clear that the limited benefits of the Truckee River were promised by the United States to too many interests.

iv. Truckee River reservoirs

In 1956, Congress authorized construction of Washoe Project, a Bureau of Reclamation project involving three dams, Stampede and Prosser Creek in the Truckee drainage and Watasheamu on the

Carson. Act of August 1, 1956 (70 Stat. 775).[4] The Washoe Project was intended to supply water for irrigation, municipal and industrial uses, recreation, power, flood control, and restoration of Pyramid Lake fisheries. Section 4 of the Washoe Project Act directed that facilities at Lake Tahoe provide for increased water releases and restoration of the fishery, and authorized construction of Marble Bluff Dam and Fishway on the Truckee near Pyramid Lake. The House Report stressed that the fishery's restoration "to its full potential value is deemed to be of national interest and importance." H.R. Rep. No. 2055, 84th Cong. 2d Sess. 4–5 (1956).

Stampede Reservoir, providing 220,000 acre-feet of storage, was originally intended to supply water for the full range of project purposes. The Carson-Truckee Water Conservancy District (CTWCD) was created under Nevada law to enter into repayment contracts to purchase water from Stampede.

In the early 1970's, the Secretary of the Interior elected to use Stampede exclusively for the benefit of Pyramid Lake fish species listed under the Endangered Species Act. The Secretary's decision was challenged by CTWCD and the Sierra Pacific Power Company who argued that the Washoe Project Act obligated the Secretary to use Stampede for their benefit. The Ninth Circuit affirmed the District Court's ruling which supported the Secretary's determination that the Endangered Species Act obliged the Secretary to defer all other uses of the reservoir until Pyramid Lake fish were no longer classified as endangered or threatened. *Carson-Truckee Water Conservancy District* v. *Clark,* 741 F.2d 257 (9th Cir. 1984), *cert. den.* 53 U.S.L.W. 368 (March 26, 1985).

The restriction on Stampede storage severely limits drought protection and future water supplies for the growing Reno-Sparks area.

No repayment contracts have been executed for Stampede Reservoir.

v. OCAP Litigation and Implemenation

In February 1967, the Secretary of the Interior adopted general operating criteria and procedures ("OCAP") to govern the exercise of water rights held by the United States in the Truckee and Carson River systems. 32 Fed. Reg. 3098; 43 C.F.R. 418. One objective of these criteria was to maximize the use of Carson River waters to meet water requirements on the Newlands Project and conserve Truckee flows so as to make as much water available to Pyramid Lake as possible. 43 C.F.R. 418.3(a). Initial OCAP set the Newlands Project's maximum annual diversions from both the Carson and Truckee rivers at 406,000 acre-feet, subject to later reductions.

The Pryamid Lake Tribe subsequently brought suit against the Federal government charging that the original OCAP were inadequate. In 1973, the District Court for the District of Columbia upheld the Tribe's claim, finding that waste of water was occurring on the Newlands Project and the Secretary's fiduciary obligations

[4] Watasheamu Dam has not been built due to unfavorable benefit-cost evaluations. The State of Nevada and Carson Water Subconservancy District are studying the feasibility of a smaller, 50,000 acre-foot reservoir on the carson, located entirely within Nevada.

to the Tribe required delivery of all water to Pyramid Lake not otherwise obligated by court decrees or contracts. *Pyramid Lake Paiute Tribe* v. *Morton,* 354 F. Supp. 252 (D. D.C. 1973). The court directed the Secretary to enforce the 1973 OCAP which reduced Truckee-Carson Irrigation District's (TCID) combined Carson and Truckee River diversions to a maximum of 288,000 acre-feet annually. The court ordered the Secretary to terminate a 1926 contract with TCID, which has permitted operation of the Newlands Project by TCID, if the District substantially violated the new OCAP.

TCID was not a party to the case and refused to comply with the court-ordered OCAP. In 1973, TCID deliberately diverted more water than allowed under the OACP, and the Secretary terminated the contrct with the district. Through subsequent litigation brought by TCID, the courts have confirmed the Secretary's right to terminate the contract. *Truckee-Carson Irrigation District* v. *Secretary,* 742 F.2D 527 (9th Cir. 1984), *cert. den.* 53 U.S.L.W. 3867 (June 11, 1985).

Following the 1973 decision, the Bureau of Reclamation issued an "interim" OCAP each year. In 1988, the Bureau proposed a final OCAP with maximum annual diversions from both the Truckee and Carson rivers reduced incrementally to 320,000 acre-feet by 1992. Project efficiencies would be improved from a 1981–85 average of 55 percent to approximately 66.7 percent.

The proposed final OCAP has been challenged by all interests on a variety of grounds, including the number of acres eligible to receive Project water, duties of water on Project lands, compliance with past OCAP's, water requirements for the Lahontan Valley wetlands, operation of Lahontan Reservoir, and NEPA compliance.

Recent Ninth Circuit decisions have not been favorable to Newlands Project irrigation interests. In *Pyramid Lake Paiute Tribe* v. *Hodel,* 878 F. 2d 1215 (9th Cir. 1989), the court upheld provisions of the 1973 OCAP disallowing delivery of water to any Newlands Project lands without valid water rights, and prohibiting delivery of water to farmers who irrigate non-water righted lands. Enforcement of the ruling could reduce maximum annual diversions from the Truckee by about 20,000 acre-feet. The Tribe is also pursuing restitution from TCID and Newlands Project irrigators for past diversions from the Truckee which were not in compliance with applicable OCAP. The Secretary of the Interior has indicated that the total of such wrongful diversions may exceed 800,000 acre-feet of water.

In *Pyramid Lake Paiute Tribe* v. *Hodel,* 882 F.2d 364 (9th Cir. 1989), the Ninth Circuit found that water illegally diverted to the Newlands Project could be repaid to Pyramid Lake in subsequent years. The Department of Justice has advised the Department of the Interior that:

> Indisputably, many hundreds of thousands of acre feet of water were diverted out the Truckee River from 1973 to at least 1985 in violation of the Secretary's regulations. (TCID was at that time actively challenging the Secretary's authority to impose regulations on the project.) [T]here remain many questions with regard to . . . the practical considerations of how such large quantities of water could

> be recovered without causing significant harm to the project . . .

Letter from Richard B. Stewart, Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice, to Martin Allday, Solicitor, U.S. Department of the Interior (1989).

4. LAHONTAN VALLEY WETLANDS

The Truckee and Caron Rivers historically supported expansive wetland areas which, in turn, supported millions of migratory waterfowl using the eastern edge of the Pacific Flyway. Development of the Newlands Reclamation Project substantially and directly affected these wetlands. Western Nevada wetlands have been reduced from 113,000 acres to about 15,000 acres in 1987—a loss of more than 85 percent.

In some cases, the Newlands Project eliminated wetlands entirely. In others, the Project intercepted wetlands' clean water supplies and substituted agricultural drainage. For a period, agricultural drainage from the loosely operated Newlands Project supported remnant wetland areas in the Lahontan Valley. But, with the promulgation of the OCAP regulations, and as a result of subsequent litigation concerning project water rights, the Newlands Project has been required to operate more efficiently; agricultural drainage has been significantly reduced, with concurrent reductions in flows to the Lahontan Valley wetlands.

The remnant wetlands continue to serve as vital resting, feeding and breeding areas for waterfowl. But the wetlands are drying, and, as they dry, naturally occurring trace elements such as arsenic, boron, lithium, molybdenum, mercury and selenium are becoming concentrated, some reaching toxic levels. Bird, fish and wildlife kills are becoming chronic, and studies document increasing bioaccumulation and deformities. The State of Nevada has warned against eating ducks taken from the area. Botulism and avian cholera account for a significant number of waterfowl mortalities. The crowding of birds and continued degradation of water quality will aggravate this situation. As habitat continues to diminish, birds are forced into smaller areas, which increases the probability of disease transmission.

Stillwater Wildlife Management Area, including the Stillwater National Wildlife Refuge, and Carson Lake and Pasture comprise the largest primary wetlands within the Lahontan Valley. Over 410,000 ducks, 28,000 geese and 14,000 swans have been observed using the area annually during wet year spring and fall migrations. Over 4,500 breeding pairs of ducks, primarily redheads, gadwalls and cinnamon teal have been recorded in the area, producing up to 25,000 waterfowl annually. Up to 50 percent of the Pacific Flyway fall canvasback population migrates through the area. These wetlands serve a critical function as a major staging area for over 250,000 shorebirds and over 50 percent of the North American Long-billed dowitcher population. In 1988, Lahontan Valley was dedicated as a Western Hemisphere Shorebird Reserve, one of only four such sites in the U.S. The Lahontan Valley wetlands support the largest single breeding colony of White-Faced Ibis in North America. Up to 70 Bald Eagles overwinter in the area.

Anaho Island National Wildlife Refuge, located in Pyramid Lake, supports the largest nesting colony of American white pelicans in North America. White pelicans require shallow waters for feeding. The only remaining shallow marshes in western Nevada within range of Anaho Island are the Lahontan wetlands. The number of young pelicans produced at Anaho Island dropped from 6,000 in 1987 to 300 in 1989.

Stillwater has been nominated as a wetland of international importance under the Convention on Wetlands of International Importance.

Approximately 20 percent of Churchill County's economy is derived from tourism and recreation that includes hunting, bird-watching and fishing.

The Lahontan Valley wetlands require significantly increased firm supplies of clean water. Congress appropriated $1.2 million in fiscal year 1989 for acquisition of water rights to benefit the Stillwater Wildlife Management Area. An additional $1.5 was appropriated for fiscal year 1990. The President's fiscal year 1991 budget proposal includes $2.0 million for additional water right acquisitions.

5. FALLON NAVAL AIR STATION INTERESTS

The Fallon Naval Air Station is located about 5 miles southeast of the city of Fallon. The Navy leases approximately 3,000 acres of irrigated land to farmers, with the bulk of the land now producing alfalfa or pasture. The land carries Newlands Project water rights, with water deliveries costing the Navy approximately $60,000 per year.

The Navy's "agricultural outlease" program is designed to stabilize the soils adjacent to runways. Wind-blown dust and debris pose serious hazards to flight operations. Irrigated crops reduce blowing debris and offer some fire control benefits.

Earlier this year, the Ninth Circuit Court of Appeals rejected the claim of the Pyramid Lake Tribe that the Endangered Species Act requires that the United States reallocate the Naval Air Station's irrigation rights to Pyramid Lake for fishery purposes.

6. FALLON PAIUTE-SHOSHONE TRIBE INTERESTS

The Fallon Paiute-Shoshone Indian Reservation is located about ten miles east of Fallon. The Reservation includes 8,120 acres; 3,480 acres tribally owned and 4,640 acres individually owned. The enrolled membership of the Fallon Paiute-Shoshone Tribe is approximately 850, almost all of whom live on the reservation or in the Fallon area. The average per capita reservation income is about one-third of the county average and the average reservation family income is about one-half of the county average.

The relevant history of the Tribe stems from allotments made from the public domain to individual Paiute and Shoshone Indians under the General Allotment Act of 1887. By 1895, 196 allotments of 160 acres each had been made, totalling about 31,000 acres. As it happened, these lands were in the area subsequently selected for the Newlands Reclamation Project. In 1906, an agreement was reached whereby the Indians would release their original 160-acre

allotments of non-irrigated land and receive in exchange 10-acre allotments of land with paid-up water rights and suitable irrigation facilities. Of the 196 original allottees, 189 consented to the exchange. A 1907 Department of the Interior order reserved an area of 4,640 acres on behalf of Indians who had relinquished their original allotments and such other Indians as might, on investigation, be found entitled to allotments thereon. An additional 840 acres adjoining the north boundary of the reservation were set aside in 1917.

Water for the reservation lands is provided from the Newlands Reclamation Project.

From the beginning, much of the reservation land proved unsuitable for irrigation. A 1932 survey indicated that 2,410 acres of the 5,480 total were non-irrigable because of topography, soil, salt, or poor drainage. Despite construction of additional drains, a 1970 survey indicated that 1,600 acres remained unsuitable for irrigation.

In 1978, Congress enacted Pub. L. 95-337, Act of August 4, 1978 (92 Stat. 455), which recognized that the Fallon Tribe had not received adequate compensation for the lands exchanged in 1906. The law authorized acquisition of 2,640 acres of land to be held in trust for the tribe and directed the Secretary of the Interior as his "first priority" to complete the irrigation system on the original reservation's 4,640 acres and extend the system to the added lands so as to bring into cultivation 1,800 acres of the added lands. The new irrigation project was to be known as "Fallon II."

Subsequent to passage of Pub. L. 95-337, certain forces converged to impede fulfillment of its terms. First, research determined that drainage water from Fallon II lands carried very high concentrations of potentially toxic trace elements. Second, implementation of the revised OCAP for the Newlands Project required the project to cut, not expand, its water usage. The long-promised compensation owed the Fallon Paiute-Shoshone Tribe—expansion of on-Reservation irrigated agriculture—would come at the expense of those interests seeking to protect Pyramid Lake fisheries and Lahontan Valley wetlands.

The Department of the Interior has suggested that the Tribe consider accepting an economic development fund in lieu of the irrigation development contemplated by Pub. L. 95-337. To this point, the Tribe has generally called for strict compliance with the terms of the act. Others have suggested that, instead of irrigating new areas, the Federal government should purchase already irrigated land within the Newlands Project adjacent to the reservation.

A 1988 Interior Department estimate places the cost of fulfilling Pub. L. 95-337 at $30 million, with an annual operations and maintenance cost of $100,000—$150,000. A University of Nevada-Reno study estimates that the economic value to the tribe of the original 1906 agreement would have totalled $100—$150 million over the past 80 years.

Over the past year, settlement discussions have been underway with the Fallon Tribe. The Committee hopes that a settlement will be available for consideration by the Senate during the 101st Congress. This title includes various provisions intended to protect the

Fallon Tribe's interests and avoid any interference in present settlement discussions.

Section by Section Analysis of Title II

Section 201 provides that title II of this bill may be cited as the "Truckee-Carson Pyramid Lake Water Rights Settlement Act."

Section 202 outlines the purposes of the bill.

Section 203 defines various words and phrases for the purpose of this title.

Section 204 apportions the waters of the Carson River, Lake Tahoe, and the Truckee River between the State of California and the State of Nevada. It implements a negotiated agreement reached between the two States, the United States, and other affected interests in each State, including, particularly, the Pyramid Lake Paiute Tribe of Indians. These negotiations took several years to complete and were based, in part, on earlier efforts made by the two States to achieve an equitable apportionment of these waters. Section 204 is intended to provide a permanent and final resolution to longstanding controversies over the two States' respective rights in these vital and limited water resources. The Committee notes that section 204 serves the same function as an interstate compact, namely, achieving a voluntary, equitable apportionment of water between the two States.

The watersheds of the Carson and Truckee rivers, and Lake Tahoe present special and unique circumstances which the Committee believes warrant enacting the negotiated interstate allocation as a Federal statute. The States of California and Nevada have attempted unsuccessfully to apportion these waters through negotiation and adoption of an interstate compact. The United States has attempted unsuccessfully to adjudicate these water in the United States Supreme Court, which declined to exercise its original jurisdiction. The Truckee and Carson rivers are both subject to water rights adjudications brought by the United States in Federal courts. The major storage facilities on the Truckee River are owned or operated by the United States. The Truckee River is the subject of various claims in lawsuits brought by the United States or the Pyramid Lake Tribe. Certain of these suits would be dismissed as a part of the overall settlement effective by this title, of which section 204 is an integral part.

Section 204 recognizes and preserves the proper role of the States in water management and administration of State law governing water rights and water use.

Subsection 204(a) concerns the Carson River. Water right claims in the Carson River basin in both California and Nevada were generally adjudicated by a 1980 decree in *United States* v. *Alpine Land and Reservoir Company,* Civ. No. D-183 (D. Nev. 1980) (hereafter "*Alpine* decree"). The *Alpine* decree is not the product of an equitable apportionment of Carson River basin waters between the two States. Instead, it is a determination of individual water rights in both the California and Nevada portions of that basin. Nevertheless, the *Alpine* decree is sufficiently comprehensive in scope as to provide a sound initial basis for an interstate allocation. Paragraph 204(a)(1) confirms the interstate allocations agreed upon by Califor-

nia and Nevada, and which are consistent with the individual rights confirmed by the *Alpine* decree.

Paragraph 204(a)(2) is intended to ensure that the exercise of water rights in existence as of January 1, 1989, but not included in the *Alpine* decree, will not be precluded by enactment of this title. The *Alpine* case was an *in personam* action which binds the parties to it and their successors. Subsection 204(a) makes the *Alpine* decree the initial basis for the interstate allocation of the Carson River because most uses of water are included in it. However, research by the California Department of Water Resources identified approximately 1,300 acre-feet of use by depletion within the California portion of the Carson River basin which were not included in the *Alpine* decree. To the extent that these uses have a legal basis under State law, the amount of water they represent would be allocated in addition to the rights detemined by the *Alpine* decree. No increase in diversions from the Carson River beyond those established as of December 31, 1992, will be permitted.

Paragraph 204(a)(3) and (4) are intended to provide a means of compensating California water users in the event that the current import of treated effluent from the Lake Tahoe basin into the Carson River basin in Alpine County, California, is discontinued.

Paragraph 204(a)(5) provides that nothing in this title shall preclude either State from studying the use of surface water which may otherwise be lost to beneficial use, to enable conjunctive use with groundwater. Current studies by the United States Geological Survey indicate considerable potential for such conjunctive use of Carson River basin water.

Subsection 204(b) apportions the water of Lake Tahoe and establishes an annual ceiling on all diversions within the Lake Tahoe basin. Paragraph 204(b)(2) lists criteria for measuring diversions. Subparagraph 204(b)(2)(A) recognizes that a major portion of water diverted and used to make artificial snow ultimately returns to the Lake Tahoe basin as runoff. Accordingly, the first 600 acre-feet of water used to make snow within California, and the first 350 acre-feet used to make show within Nevada are exempted from uses of water charged to the allocations of water for either State. These amounts are based on the States' calcuations of the amount of water diverted for artificial snowmaking prior to the enactment of this title. Each State's allocation would be charged with the amount of water which does not return as runoff for any artificial snow making requiring diversions in excess of the specified amounts. This subparagraph is not intended to affect in any way the allocation of water between the States. Nor is this provision intended to affect the authority of water purveyors to provide additional water for artificial snow making, either to ski resorts which currently use artificial snow, or to those which may choose to do so in the future.

Clause 204(b)(2)(C)(ii) is intended to promote water conversation in the Lake Tahoe basin. This clause permits the States to measure water use as the sum of the amounts of water delivered to all metered connections, if all delivery points are equipped with a water meter, and if the State law provides for adoption of water conservation plans meeting the specified criteria, the terms of which were modelled after California Water Code section 10610, *et seq*. Nothing

in this section is intended to preclude either State from enacting new law or amending any existing law to authorize or require adoption of management plans which meet the criteria of clause (ii).

Subsection 204(c) apportions the water of the Truckee River basin. California is allocated the use of 32,000 acre-feet per year from all natural sources, subject to several conditions. California's use from surface sources is limited to 10,000 acre-feet per year, and is subordinated to the Pyramid Lake Tribe's rights recognized in Claim Nos. 1 and 2 of the *Orr Ditch* decree. Diversions of surface water begun after the date of enactment of this title will be subordinated to the Sierra Pacific Power Company's 40 cubic feet per second right described in Article V of the Truckee River Agreement. Additionally, use of water in California for commercial irrigated agriculture, as defined in subparagraph 204 (c)(1)(H), which is initiated after the date of enactment of this title, will be subordinated to all uses in Nevada, including maintenance and preservation of the Pyramid Lake fishery. Except for these priorities, nothing in this subsection is intended to subordinate California's 10,000 acre-foot surface water allocation to any other use of water in Nevada.

Under subsection 204(c), California's use of groundwater within its overall 32,000 acre-foot allocation is made senior to all uses of groundwater in Nevada having a point of extraction within California. Any such uses in Nevada must cease to the extent the extractions cause safe yield of a groundwater basin to be exceeded. Safe yield would be determined, if necessary, by California law. As specified in subparagraph 205(a)(3)(I), procedures for implementing California's allocation of Truckee River water for use within the California portion of the Truckee River basin may be included in the Operating Agreement. This may include criteria for diversion and storage of all or any portion of California's 10,000 acre-foot surface water allocation, consistent with the priority assigned to it by this section.

Under paragraph 204(c)(2), a long-standing transbasin diversion from the Truckee River basin into the Sierra Valley, Sierra County, California, is recognized and allocated to California in addition to the overall 32,000 acre-foot per year allocation.

Paragraph 204(c)(3) provides that, all Truckee River basin water not expressly allocated for use in California is allocated for use in Nevada.

The Committee recognizes that a central purpose of this interstate apportionment of water is to secure to each State an amount of water upon which the Senate may rely for its own needs, including economic development and environmental protection. Subsection 204(f) provides that interstate transfers of water in the Truckee and Carson river basins are subject to restrictions which the States may enact to protect their legitimate economic and enviromental interests. This subsection requires that such rules apply in an identical manner to intrastate and interstate transfers. The Committee intends that both the terms and implementation of such rules be considered in judging their permissibility under this section.

Interstate transfers in the Truckee and Carson river basins will be subject to different processes. Truckee River basin transfers will be governed by applicable State law, as limited by this subsection and paragraph 204(f)(1). With regard to the Carson River basin, the *Alpine* decree reserved jurisdiction in the United States District Court to review, among other things, proposed changes in point of diversion, manner of use, and place of use. Paragraph 204(f)(2) integrates the authority of the States with the jurisdiction of the *Alpine* court, including that Court's public interest jurisdiction, with the intention of avoiding disruption of the Court's administration of Carson River basin water rights.

Paragraph 204(f)(3) addresses those instances where the United States may seek an interstate transfer of Truckee or Carson river basin water or water rights. Generally speaking, in such cases the rule established by the United States Supreme Court in the case of *California* v. *United States*, 438 U.S. 645 (1978) will govern. In using the phrase "inconsistent with any clear statutory directive," the Committee intends that the phrase be interpreted according to the decision in that case and subsequent cases implementing that decision. Paragraph 204(f)(3) is not intended to alter Federal compliance with State water law. However, this section means that neither State is empowered to deny or impose conditions on transfers proposed by the United States or when the result would be inconsistent with any clear statutory directive enacted subsequent to enactment of this title, or would be inconsistent with the United States responsibilities to the Lahontan Valley wetlands or Pyramid Lake fishery under the Endangered Species Act, as amended. This paragraph is not intended to impair or diminish the United States responsibilities within California under the Endangered Species Act, as amended, or this title.

Section 205, in general, authorizes and directs the Secretary of the Interior to use Federal water storage facilities in the Truckee River basin and take certain other actions to aid in the implementation of an agreement to be signed by the United States, Sierra Pacific Power Company, and the Pyramid Lake Tribe. That agreement, referred to as the "Preliminary Settlement Agreement as modified by the Ratification Agreement," will make possible significant changes in the operation of Truckee River storage facilities and exercise of Truckee River water rights so as to improve spawning conditions for cui-ui and Lahontan cutthroat trout and, at the same time, provide water to serve the Reno-Sparks area during drought periods. The Preliminary Settlement Agreement as modified by the Ratification Agreement is reprinted as Appendix 1 of this Report.

Paragraph 205 (a)(1) directs the Secretary to negotiate and enter into an agreement, known as the "Operating Agreement," with the State of Nevada and State of California. The Operating Agreement will govern the operation of Federal reservoirs in the Truckee River basin in order to carry out the Preliminary Settlement Agreement as modified by the Ratification Agreement, and meet certain other requirements. If other parties to the *Orr Ditch* decree choose to become parties to the Operating Agreement, that agreement may include operation of privately owned reservoirs. The Committee understands that the Pyramid Lake Tribe and Sierra

Pacific Power Company will have to be signatories to the Operating Agreement in order to satisfy the terms, conditions, and contingencies of the Preliminary Settlement Agreement as modified by the Ratification Agreement.

Among other things, the Operating Agreement will modify the existing method of river regulation in order to carry out the Preliminary Settlement Agreement as modified by the Ratification Agreement, and will set forth criteria and procedures for satisfaction of other water rights on the river system. The Operating Agreement should also provide for improved coordination of reservoirs to satisfy instream beneficial uses of water in the Truckee River, such as fish and wildlife habitat, recreation, and water quality. The Operating Agreement should also specify an entity to administer the Agreement and its river operations provisions. The Committee notes that this section is intended to facilitate and encourage the greatest possible coordination of reservoir operations, including privately owned reservoirs, if possible, with the overall goal of moving beyond beyond the present method of river regulation, tailored to meet the needs of the early part of this century, to a method which utilizes current technology to the fullest possible extent and serves contemporary needs.

The Committee expects that negotiation of the Operating Agreement may take some time. The Secretary is required to comply with the Endangered Species Act and the National Environmental Policy Act prior to becoming a party to the Operating Agreement. The State of California has indicated that it will be required to comply with the California Environmental Quality Act prior to executing the Operating Agreement.

Subparagraph 205(a)(2)(D) expressly provides that the Operating Agreement must be structured to permit water right holders under the *Orr Ditch* and *Truckee River General Electric* decrees to continue to exercise their rights under those decrees, except where rights have been voluntarily relinquished or in the case of rights which are transferred under State law. Paragraph 205(a)(4) requires that, before entering into effect, the Operating Agreement be submitted to the *Orr Ditch* and *Truckee River General Electric* courts. These provisions are intended to protect the rights of Newlands Project irrigators and other users of Truckee River water. They should be read in conjunction with paragraph 210(b)(13) which disclaims any intent to alter or conflict with any vested or perfected Truckee River water rights or affect the power of the *Orr Ditch* court to ensure that the owners of vested and perfected Truckee River water rights receive the amount of water to which they are entitled under the *Orr Ditch* decree.

Subparagraph 205(a)(2)(C) directs the Secretary to enter into one or more mitigation agreements with the other parties to the Preliminary Settlement Agreement as modified by the Ratification Agreement and with appropriate State agencies. The mitigation agreements are intended to provide the means to remedy significant adverse environmental effects, if any, which may arise from implementation of the Preliminary Settlement Agreement as modified by the Ratification Agreement.

Paragraph 205(a)(6) directs the Secretary to collect appropriate amounts from Sierra Pacific Power Company for use of storage at

Stampede Reservoir. The Committee expects the Secretary to negotiate an agreement that reflects fully the monetary value of the storage capacity to be used by Sierra Pacific pursuant to the Preliminary Settlement Agreement as modified by the Ratification Agreement. In determining such charges, the Committee expects the Secretary to provide for inflation, and take into account such factors as avoided capacity costs, accrued construction costs (plus interest), the value of the waiver provided under paragraph 210(b)(17), and the value of rights or assets provided by Sierra Pacific Power Company to the benefit of the United States under the Preliminary Settlement Agreement as modified by the Ratification Agreement or the Operating Agreement.

Subsection 205(b) authorizes the Secretary to permit storage of non-project water in Federal water storage facilities in the Truckee River basin to implement the Preliminary Settlement Agreement as Modified by the Ratification Agreement, and to fulfill the purposes of the title. Non-project water includes, but is not limited to, the 10,000 acre-feet of Truckee River basin surface water allocated to California under section 204, where such water is not included in the California water right entitlements held by the Secretary for storage in Washoe Project or Truckee River Storage Project reservoirs. The Secretary is directed to collect reasonable charges for such storage. Payments received for such storage will be used to pay the operation and maintenance costs of Stampede Reservoir, with excess revenues covered to a special fund established by subsection 206(f) to benefit Lahontan Valley and Pyramid Lake fish and wildlife and surplus, if any, credited to the Reclamation Fund. The Committee expects the Secretary to constrain operating and maintenance expenditures at Stampede Reservoir to only those reasonably necessary. This subsection is not intended to affect payment obligations under existing contracts for storage in Truckee River reservoirs.

Subsection 205(c) cancels repayment obligations associated with construction of two Washoe Project facilities on the Truckee River, Stampede and Prosser Creek reservoirs, and revokes the Secretary's authority to construct a third Washoe Project dam, Watasheamu, planned for the Carson River, but recognized to be economically unjustifiable. Operation of Stampede and Prosser Creek reservoirs, and payment for the use of those facilities, will be governed by the provisions of this title.

Section 206 is intended to lay the foundation for the restoration and permanent protection of Great Basin wetland ecosystems in the Lahontan Valley, including the Stillwater National Wildlife Refuge. The activities authorized by this section will contribute to other national and international efforts to protect and restore migratory waterfowl and associated habitats.

Subsection 206(a) authorizes and directs the Secretary to acquire and manage sufficient water and water rights to maintain, on a long-term average, 25,000 acres of primary wetland habitat within the Lahontan Valley wetlands, an area defined in subsection 203(e) to include wetland areas associated with the Stillwater National Wildlife Refuge, Stillwater Wildlife Management Area, Carson Lake and Pasture, and the Fallon Indian Reservation.

The Committee expects the Secretary to acquire water and water rights through a variety of means, including purchase, lease, exchange, public and private donation. All purchases, however, must be from willing sellers. The Secretary's authority under this subsection extends to water rights acquisitions with or without the lands to which such rights are appurtenant. As permitted by applicable State law, this subsection would allow the Secretary to acquire water and water rights through water conservation activities within the Newlands Project. The Committee encourages the Secretary and representatives of the State of Nevada and other interests to pursue arrangements which would permit the Secretary to retain and use water conserved as a result of the Secretary's investments in measures to improve the efficiency of the Newlands Project. The Committee believes that such arrangements could serve the interests of all Newlands Project beneficiaries and assist the operator of the Newlands Project in its efforts to comply with applicable operating criteria and procedures. In light of the demands from all interest for the limited water resources of the Truckee and Carson rivers, it is vital that the Secretary and the State of Nevada cooperate in assuring that the Lahontan Valley wetlands are restored, managed, and maintained in the most water-efficient manner for the maximum benefit of those nationally and internationally valuable resources.

The Secretary is directed to acquire and use water and water rights in a manner consistent with, among other things, efforts to recover the Pyramid Lake fishery. The Secretary is barred from purchasing water rights that cannot be transferred in substantial part to the wetlands in accordance with applicable court decrees and State law. In this regard, the Committee expects the Secretary to avoid transfer of inactive water rights and, where practicable, to acquire water rights which, when transferred to the wetlands, tend to increase the efficiency of water use and delivery within the Newlands Reclamation Project.

Over the past two years, the Secretary has used certain criteria to guide acquisitions of more than 1000 acre-feet of water for the Lahontan Valley wetlands. This important achievement has taken place during a period of critical water-supply shortage. Preliminary maps identifying water rights eligible for transfer to the wetlands have been developed by the Bureau of Reclamation. The Committee notes that the acquisition, selection, transfer, and application criteria set out in subparagraphs 206(a)(1)(A)–(C) of this title are designed to reflect the existing criteria in procedure, substance, and spirit. Accordingly, the Committee believes that the Secretary's current water rights acquisition program satisfies the acquisition, selection, transfer, and application requirements of section 206(a). The Secretary's efforts to consult with affected interests, to segregate "eligible" water rights, to condition purchases and leases on the Nevada State Engineer's approval of transfer requests, and to maximize both the environmental and project benefits of the program are consistent with the goals of this subsection and title.

The Committee recognizes that water right acquisitions and transfers to the Lahontan Valley wetlands will be of assistance to Newlands Project farmers by forestalling substantial expenditures associated with management of drainwater and groundwater qual-

ity and quantity. Nevertheless, subsection 206(a)(3) reflects the Committee's effort to ensure that the operator of the Newlands Project suffers no undue financial burden as a result of the water acqusitions authorized by this section. The Secretary is authorized to pay reasonable operation and maintenance costs to the operator of the Newlands Project, and others, for the delivery of water acquired for the wetlands.

Section 206 anticipates that water and water rights for the Lahontan Valley wetlands will, for the most part, be acquired in nevada. Subparagraph 206(a)(2)(C addresses the exceptional circumstance where the Secretary chooses to purchase water within the State of California. In recognition of the interstate allocations made by subsection 204, this subparagraph directs the Secretary to consult with the Governor of California, and develop a record of decision on the basis of such consultations, to assure that the impacts of such a transfer are fully analyzed, and the requirements of applicable California law are met. This subparagraph should be interpreted and applied in connection with paragraph 204(f)(3). The Committee intends that the Secretary view acquisition of water rights in California as an option to be pursued only after exhausting reasonable alternatives in Nevada.

Subsection 206(b) expands the size of the existing Stillwater National Wildlife Refuge to approximately 77,520 acres of Federal land, and provides that the Secretay will henceforth manage the land through the United States Fish and Wildlife Service as a unit of the National Wildlife Refuge System. This subsection would more than triple the size of the current Stillwater National Wildlife Refuge by incorporating Federal lands now in the Stillwater Wildlife Management Area, and is intended to permit the Secretary to improve the management of the area in order to maintain and restore natural biological diversity within the refuge, provide for the conservation and management of fish wildlife and their habitats, fulfill the international treaty obligations of the United States with respect to fish and wildlife, and provide opportunities for scientific research, environmental education, and fish and wildlife oriented recreation. A map showing the expanded refuge area is included with this Report in Appendix 2.

Paragraph 206(b)(4) provides that expansion of the refuge shall not preclude use of those lands for Newlands Project drainage purposes, but authorizes the Secretary to take such actions as may be required to prevent and correct the adverse impacts of agricultural drainage water on the wetlands. This section does not diminish the responsibilities or liabilities of other parties with regard to improvement, treatment, or management of water draining to the Lahontan Valley wetlands. The Committee anticipates that the Secretary will take advantage of opportunities to reduce quantities of poor quality drainage water reaching the Lahontan Valley wetlands in the course of acquiring water and water rights under this section. Nothing in this title is intended to impair the Secretay's current rights under State law to use Newlands Project drainage water for the benefit of the Lahontan Valley wetlands.

Subsection 206(c) directs the Secretary of the Navy to reduce use of Newlands Project water on the Naval Air Station, Fallon, to the maximum extent practicable, while still meeting flight safety re-

quirements. Water conserved by the Secretary of the Navy will thereafter be managed by the Secretary of the Interior for the benefit of the Pyramid Lake fishery, as required to fulfill the Secretay's responsibilities under the Endangered Species Act, as amended, and the Lahontan Valley wetlands. The Committee expects the Secretary of the Navy to use best efforts to reduce water use at the base, so as to contribute to the Secretary of the Interior's efforts to restore Lahontan Valley wetlands and the Pyramid Lake fishery. The Committee expects the Secretary of the Navy to evaluate fully land management plans or measures which use, in whole or part, agricultural drainage or reclaimed wastewater supplies.

In the expectation that some irrigated farmlands associated with the Naval Air Station will be retired as a result of the water conservation measures required by this subsection, paragraph 206(c)(4) directs the Secretary of the Navy, in consultation with the Secretary of Agriculture and other interested parties, to fund and implement a program to demonstrate the feasibility of restoring previously irrigated Newlands Project farmland to a stable and ecologically appropriate dryland condition. This provision, when implemented, will assist the Secretary of the Navy in fulfilling the terms and spirit of an agreement reached with the State of Nevada on February 25, 1986, which committed the Secretary of the Navy to enhance the stability and future of the Stillwater Management Area and the Carson Lake Pasture, and would be consistent with recent directives from the Secretary of Defense regarding the military's responsibilities for environmental improvement.

Subsection 206(c)(1) refers to "recently irrigated water-righted Navy lands." This phrase is meant to ensure consistency with the Secretary's efforts to establish standards for acquisition and transfer of Newlands Project water rights.

Subsection 206(d) authorizes the Secretary of the Interior to enter into an agreement with the State of Nevada through which the State is to provide not less than $9,000,000 for water and water rights acquisitions to benefit the Lahontan Valley wetlands. This subsection represents the major component of local cost sharing associated with this legislation, and the State's contribution under the terms of the agreement with the Secretary is a prerequisite to the Secretary's authority to acquire water rights under subsection 206(a).

Subsection 206(e) authorizes the Secretary to convey to the State of Nevada Federal lands in a portion of the Lahontan Valley wetlands known as "Carson Lake and Pasture" for use by the State as a wildlife refuge and, whether the transfer takes place or not, requires that the area be managed hereafter in a manner consistent with the United States international agreements and designation of the area as a component of the Western Hemisphere Shorebird Reserve Network. If the transfer authorized by this subsection takes place, this subsection will not preclude the State of Nevada from managing the Carson Lake and Pasture for hunting or the same purposes as are provided in subsection 206(b) for the Stillwater National Wildlife Refuge.

Subsection 206(e) would create the opportunity to reduce the Secretary's costs associated with management of the Lahontan Valley wetlands, improve management of the area for migratory water-

fowl and shorebirds, and recognize important efforts made over many years by the State of Nevada in the protection and management of the Carson Lake and Pasture area. If the transfer authorized by this section occurs, the Committee expects the State and the Secretary to coordinate management of the wetland areas under their respective jurisdictions. This subsection is not intended and should not be interpreted to affect the Secretary of the Navy's operations at Naval Air Station, Fallon. A map showing the Carson Lake and Pasture is included with this Report in Appendix 2.

Subsection 206(f) establishes a special fund in the Treasury to be known as the "Lahontan Valley and Pyramid Lake Fish and Wildlife Fund" which will be credited with revenues received from the Sierra Pacific Power Company in exchange for its use of storage space in Stampede Reservoir, other revenues generated by storage of non-project water in Federal water storage facilities in the Truckee River basin, certain surplus interest earnings resulting from the Pyramid Lake Paiute Fishery Fund, and other sources, including appropriations as may be authorized or donations. The State of Nevada's contributions under subsection 206(d) may be deposited in this fund. The fund is to be used to benefit the Lahontan Valley wetland and Pyramid Lake fishery. The Committee expects the Secretary to use available authorities and entities to ensure that moneys deposited into the fund by the State of Nevada or donated by non-Federal entities or individuals shall earn interest.

Subsection 206(g) authorizes the Secretary to convey public lands in an area near Fallon, Nevada, to the State of Nevada or Churchill County, Nevada to be managed for fish and wildlife and recreation, consistent with subsection 209(i). Management of these lands has proven to be of considerable inconvenience and unreasonable expense to the Secretary. The Committee believes that the substantial local recreational use of these lands argues in favor of local responsibility for their management. A map showing these lands, which are known as the "Indian Lakes," is included in this Report in Appendix 2.

Section 207 provides certain authorities and direction to the Secretary to assist efforts under the Endangered Species Act to recover the cui-ui and Lahontan cutthroat trout.

Subsection 207(a) requires the Secretary to revise and implement cui-ui and Lahontan cutthroat trout recovery plans. This subsection requires the Secretary to implement the recovery plans in a manner that is consistent with the interstate allocations made under section 204 of this title, and the Preliminary Settlement Agreement as modified by the Ratification Agreement, and the Operating Agreement. The Secretary has advised the Committee that, since the Secretary will be a party to the Preliminary Settlement Agreement as modified by the Ratification Agreement, the Secretary will ensure that such agreements and the Operating Agreement will not impair fulfillment of the Secretary's responsibilities under the Endangered Species Act, as amended. The Committee notes that, under paragraph 205(a)(9), the Secretary is barred from becoming a party to the Operating Agreement if such action would be inconsistent with the Secretary's responsibilities under the Endangered Species Act, as amended.

The cui-ui have been listed as "endangered" under the Endangered Species Act since 1967. The Committee expects the Secretary to develop and implement the recovery plans in an expeditious manner. In particular, there should be no delays while the Operating Agreement is being negotiated and evaluated. If necesssary and appropriate in the judgment of the Secretary, the recovery plans may be revised and updated when the interstate allocations under section 204, the Preliminary Settlement Agreement as modified by the Ratification Agreement, and the Operating Agreement enter into effect.

This subsection is not intended to modify the requirements of the Endangered Species Act, as amended. The recovery plans developed and implemented pursuant to this subsection must satisfy all of the requirements of the Endangered Species Act, as amended, including section 4(f). In particular, the plans must include descriptions of the site-specific management actions necessary to achieve recovery. The reports required by section 4(f) of the Endangered Species Act should specifically describe the extent to which recovery of the cui-ui and Lahontan cutthroat trout has been achieved, the current status of the implementation of recovery plans, any need for adjustment in those plans, and the accrued and projected costs for implementation of those plans. The plans developed pursuant to subsection 207(a) must address and provide solutions for all impediments to the recovery of the cui-ui and Lahontan cutthroat trout.

Subsection 207(b) directs the Secretary of the Army to expand an existing study of the Truckee River to include a study of the rehabilitation of the lower Truckee River for the benefit of the Pyramid Lake fishery.

Subsection 207(c) authorized the Secretary to acquire and use water and water rights for the benefit of the Pyramid Lake fishery. Like subsection 206(a), this subsection anticipates that water and water rights for the Lahontan Valley wetlands will, for the most part, be acquired in Nevada. Subsection 207(c)(2)(C) address the exceptional circumstance where the Secretary chooses to purchase water within the State of California. In recognition of the interstate allocations made by section 204, this paragraph directs the Secretary to consult with the Governor of California, and develop a record of decision on the basis of such consultations, to assure that the impacts of such a transfer are fully analyzed, and the requirements of applicable California law are met. This subparagraph should be interpreted and applied in connection with paragraph 204(f)(3). The Committee intends that the Secretary view acquisition of water rights in California as an option to be pursued only after exhausting reasonable alternatives in Nevada. The limitations on acquisition and transfer of water rights under this subsection are not intended and should not be interpreted to apply to any authority the Secretary may have to acquire and transfer water rights under the Endangered Species Act, as amended.

Subsection 207(d) requires the Secretary to use the United States' rights to store water in Stampede Reservoir and Prosser Creek Reservoir for the benefit of the Pyramid Lake fishery, subject to certain other agreements. The intent of this section is to provide that the United States storage rights in Stampede Reservoir will be used hereafter for the benefit of the Pyramid Lake fishery. United

States storage rights in Prosser Reservoir are to be used solely for the benefit of the Pyramid Lake fishery until such time as the cui-ui and Lahontan cutthroat trout both are recovered under the terms of the Endangered Species Act, as amended.

Subsection 207(e) explains the inclusion of provisions in subsection 206(c) related to use of water at the Naval Air Station at Fallon, Nevada. This subsection explains that water saved from implementation of less water-intensive land management practices at the Naval Air Station is intended to offset any reductions in flows in the Truckee River and to Pyramid Lake that may result from the interstate allocations under section 204 or from certain waivers contained in the Preliminary Settlement Agreement as modified by the Ratification Agreement. The Committee notes, however, that the legal effectiveness of section 204, including the interstate water allocations, and of the waivers contained in the Preliminary Settlement Agreement as modified by the Ratification Agreement, are not conditioned upon the Navy achieving savings of a particular quantity of water. Although this title does establish certain conditions on the effectiveness of section 204 and the Preliminary Settlement Agreement as modified by the Ratification Agreement, nothing in subsection 207(e) is intended as such a condition.

Section 208 establishes two special funds in the Treasury for the benefit of the Pyramid Lake Tribe. Both funds are subject to preconditions intended to resolve water-related controversies between the Tribe and other users of the Truckee and Carson rivers.

Subsection 208(a) establishes the "Pyramid Lake Paiute Fisheries Fund" and the "Pyramid Lake Paiute Economic Development Fund." Subsection 208(a)(2) authorizes appropriation of $25,000,000 to the Pyramid Lake Paiute Fisheries Fund (hereafter "Fisheries Fund"). Subsection 208(a)(3) authorizes appropriation of $50,000,000 to the Pyramid Lake Paiute Economic Development Fund (hereafter "Development Fund").

The Fisheries Fund is structured as a permanent trust account, with the principal and a portion of annual interest earnings unavailable for withdrawal. In part, interest earnings from this fund would replace moneys which are now appropriated annually to the Secretary to be used for the benefit of the Pyramid Lake fishery. Interest from the Fisheries Fund would be available to the Pyramid Lake Tribe for the purposes of operation and maintenance of tribal fishery facilities at Pyramid Lake, and for restoration, maintenance, and management of the Pyramid Lake fishery in accordance with plans prepared by the tribe in cooperation with the United States Fish and Wildlife Service and approved by the Secretary. Funds could not be disbursed from the Fishery Fund until, first, the Pyramid Lake Tribe releases any and all claims of any kind against the United States for damages to the Pyramid Lake fishery resulting from the Secretary's acts or omissions prior to the date of enactment of this title, and, second, the Pyramid Lake Tribe assumes complete financial responsibility for tribal fishery facilities. This provision is not intended to confer any fishery management authorities on the tribe that the tribe does not possess under current law, nor is it intended to diminish the Secretary's authority or responsibilities under the Endangered Species Act, as amended.

The Development Fund, both principal and interest, would be available for tribal economic development in accordance with a plan developed in consultation with the Secretary. Subparagraph 208(a)(3)(A) requires that the objectives of the plan shall be to develop long-term, profit-making opportunities for the tribe and its members, to create optimum employment opportunities for tribal members, and to establish a high quality recreation area at Pyramid lake using the unique natural and cultural resources of the Pyramid Lake Indian Reservation. The plan must be consistent with the fishery restoration goals of section 207 of this title. The Secretary is barred from disbursing any sums from this fund until, among other things, the interstate allocations, Preliminary Settlement Agreement as modified by the Ratification Agreement, and the Operating Agreement go into effect.

No portion of the principal of either fund may be distributed to members of the Pyramid Lake Tribe on a per capita basis.

Section 209 is intended to assist the Secretary and the operator of the Newlands Project in meeting contemporary demands for the project's water and facilities, while resolving certain controversies that have afflicted the project in recent decades.

Subsection 209(a) authorizes the Secretary to continue to operate the Newlands Project for its traditional irrigation purpose and a variety of contemporary purposes, including municipal and industrial, fish and wildlife, recreation, and any purpose recognized as a beneficial use under the law of the State of Nevada. This section is intended to permit operation of the project for such additional purposes, while ensuring that State law will govern transfers of water rights needed to meet those purposes. The expansion of authorized purposes is particularly important since, unlike other Reclamation projects, the United States does not hold the water rights for Newlands Project purposes, but rather delivers water for purposes under State law.

Subsection 209(b) requires the Secretary to implement this legislation in a manner consistent with applicable court decrees and regulations, including those which limit diversions from the Truckee River in order to meet water needs within the Truckee River basin and fulfill the Secretary's trust obligation to the Pyramid Lake Tribe and Endangered Species Act responsibilities with respect to the Pyramid Lake fishery.

Subsection 209(c) directs the Secretary to study and report on the feasibility of increasing the conveyance efficiency of the Newlands Project to seventy-five percent within twelve years after the date of enactment of this legislation. This section does not require the Newlands Project to be operated at 75 percent efficiency, but is intended to provide the Secretary and Congress with a comprehensive, workable plan for significantly improving the efficiency of water use in the project. The Committee believes that such a plan with assist the United States, State of Nevada, local governments, and the operator of the Newlands Project in efforts to protect the viability of the irrigation project while meeting increased needs for project water for other purposes.

Subsection 209(d) authorizes the Secretary to work with the State of Nevada and others to develop a "water bank" in Lahontan Reservoir. The water bank is conceived as a voluntary administrative

mechanism whereby water right holders are allowed to use available storage and conveyance capacity to store and convey water not required for immediate use. The bank would be available for any beneficial purpose, including irrigation, fish and wildlife, and municipal and industrial, and would be available to any Newlands Project water right holder, including project farmers and the United States. The water bank is intended to encourage conservation and wise use of Newlands Project water by limiting the impact of the traditional "use it or lose it" principle of Nevada water law. The water bank would, however, be required to operate in a manner consistent with State law. The Committee notes that this provision is supported strongly by users of the Newlands Project and, accordingly, urges the Secretary to pursue implementation of this subsection in an expeditious manner.

Subsection 209(e) authorizes the Secretary to study measures to benefit recreational use of Lahontan Reservoir and the Carson River below Lahontan Dam.

Subsection 209(f) authorizes the Secretary to study the use of municipal wastewater for the purpose of improving certain existing and former wetland areas, and other beneficial purposes. This study is intended to complement efforts now underway involving the Environmental Protection Agency and others to improve the quality of Truckee River water downstream of Reno and Sparks, Nevada. The Committee expects that all such studies will fully describe and evaluate the effects that alternative effluent reuse proposals and associated water right acquisitions or exchanges would have on attainment of the goals and objectives of sections 206 and 207 of this title. The Secretary should avoid the implementation of any alternative that would frustrate those goals and objectives.

Subsection 209(g) authorizes the Secretary to cancel repayment obligations owed to the Bureau of Reclamation by the Truckee-Carson Irrigation District. The debt cancellation authorized by this section would provide the Truckee-Carson Irrigation District with benefits over and above the substantial accumulated interest subsidies already provided to Newlands Project beneficiaries, an amount that has been estimated to exceed $50,000,000. In light of these and other benefits provided to the District, the Committee expects the Secretary to secure appropriate assurances from the District regarding the future use of collected repayment funds.

Subsection 209(h) provides that the benefits of subsections 209(d), 209(e), 209(f), 209(g) are contingent on final resolution of certain claims involving the Truckee-Carson Irrigation District and others. Paragraph 209(h)(2) provides that the debt cancellation authorized by section 209(g) is contingent on the State of Nevada providing a minimum of $4,000,000 in funds for water conservation measures associated with resolution of the claims involving the Truckee-Carson Irrigation District. Paragraph 209(h)(3) authorizes the Secretary to expend such sums as may be required to match on a dollar-for-dollar basis the sums contributed by the State of Nevada under paragraph 209(h)(2).

Subsection 209(j) is intended to guide the Secretary's promulgation and enforcement of operating criteria and procedures for the Newlands Reclamation Project. This subsection reflects the Committee's view that uncertainty associated with the basis, terms, and

enforcement of past OCAP significantly restricted the substantial public benefits which the Newlands Project and the water resources of the Truckee and Carson river basins are capable of providing.

Paragraph 209(j)(1) requires the Secretary to implement this title in a manner fully consistent with the decision in the case of *Pyramid Lake Paiute Tribe of Indians* v. *Morton*, 354 F. Supp. 252 (D. D.C. 1973). Though it affirms the United States District Court's 1973 ruling, this paragraph does not require the Secretary to implement the OCAP prescribed by that ruling, either now or at any time in the future. Rather, this provision is intended and should be interpreted to require the Secretary to comply with the principles and standards established by that decision in implementing this title.

Paragraph 209(j)(2) provides a mandatory, interim resolution of litigation concerning the Secretary's final OCAP, as promulgated in April 1988 ("1988 OCAP"). Throughout the more than 400 days during which this legislation was pending before the Committee, and during the months that preceded introduction of the bill from which this title is drawn, numerous efforts were made to settle the various parties' claims related to the 1988 OCAP. No settlement could be achieved. The Committee believes that the public interest will be served best if, over the next seven years, the Secretary's 1988 OCAP govern operation of the Newlands Project. The Committee expresses the hope that seven years will afford all parties ample time to resolve the OCAP-related disputes that have troubled the Newlands Project and users of the Truckee River over the past two decades. The seven-year prohibition on OCAP litigation established by this paragraph is not intended to extinguish any party's legal rights or interests. This provision requires only that claims concerning such rights or interests be held in abeyance until December 31, 1997.

This paragraph reflects a difficult compromise struck by the Committee. Throughout negotiation of this title, the Secretary of the Interior sought a permanent, congressional ratification of the 1988 OCAP. As an alternative, the Secretary argued that, in exchange for other benefits under this bill, Newlands Project beneficiaries and the Pyramid Lake Tribe should be required to dismiss with prejudice all claims related to the Secretary's 1988 OCAP. The Committee was unable to agree to the Secretary's request for a permanent imposition of the 1988 OCAP because of concern that the Secretary's ability to fulfill his various obligations associated with the Newlands Project, Pyramid Lake Tribe, Fallon Tribe, and the Endangered Species Act might be impaired.

The Committee was also unable to agree to the Secretary's request that the Newlands Project beneficiaries and Pyramid Lake Tribe be required to abandon all claims related to the 1988 OCAP. While the Secretary's proposal was apparently reasonable, the Committee's unsuccessful experience in promoting an OCAP settlement and consultations with various parties produced the firm conclusion that, in all likelihood, such a precondition would become an impassible barrier to implementation of the central provisions of this title, including the interstate allocations under section 204 and improved Truckee River operations under section 205. Positions, at-

titudes, and expectations shaped by years of litigation had hardened to the point where the flexibility needed for compromise was lost. Indeed, the Committee was advised by the Department of Justice that reaching settlements with some parties would be virtually impossible. Rather than place this title's substantial regional and national benefits in such jeopardy, the Committee chose a middle course, one which provides temporary certainty as to the terms of the Newlands Project's OCAP, a temporary end to all OCAP litigation, flexibility to meet the Secretary's legal obligations, and a significant period of time during which the various claimants to the Truckee's water may reflect on heretofore unexplored opportunities for cooperation.

Under this paragraph, the Secretary retains the right to change the 1988 OCAP before December 31, 1997, if required to meet his obligations, including those under the Endangered Species Act, as amended. This paragraph does not mean that the Secretary has the right to do what is prohibited under other applicable law or decrees, including the Administrative Procedures Act, National Environmental Policy Act, the *Orr Ditch* decree or the *Alpine* decree. This paragraph means that the Secretary retains discretion to deviate from the 1988 OCAP if the Secretary determines that such change is required to meet his legal obligations, but, prior to January 1, 1998, cannot be compelled to do so by any other party through any means whatsoever. If the Secretary does choose to modify the 1988 OCAP prior to December 31, 1997, the prohibition on judicial or administrative review established by this paragraph will terminate automatically.

Paragraph 209(j)(2) also validates certain actions taken by the Secretary under prior OCAP. This paragraph is not intended and should not be interpreted to affect or modify any judicial decisions made prior to enactment of this title concerning such actions by the Secretary.

Paragraph 209(j)(3) directs the Secretary to ensure compliance with all provisions of the 1988 OCAP and any applicable provisions of previously adopted OCAP. The Committee expects the Secretary to enforce both the letter and the spirit of applicable OCAP. The Committee believes that strict enforcement of the Secretary's OCAP will encourage stable, predictable, and fair operation of the Newlands Project, while eliminating what has proven to be a major cause of past litigation and discord. This paragraph provides also that the Secretary is to pursue recoupment of any water diverted from the Truckee River in excess of applicable OCAP. This provision should be read together with subsection 209(h) which offers incentives to the Truckee-Carson Irrigation District to enter into a settlement agreement with the Secretary concerning recoupment of water diverted in excess of amounts permitted under applicable OCAP.

Subsection 210(a) lists contingencies on the effectiveness of certain provisions of this title. The Committee notes that implementation of the Preliminary Settlement Agreement as modified by the Ratification Agreement, not this title, will require substantial water conservation efforts in the Truckee Meadows area, including comprehensive retrofit metering of residences, inverted block-rate

pricing structures, and mandatory drought-year water-use reduction.

Subsection 210(b) includes a number of savings clauses and provisions relating to the status of lands within the exterior boundaries of the Pyramid Lake Indian Reservation.

Paragraph 210(b)(2) is intended to bring long-term protection to Anaho Island, including lands that have been or may be exposed as a consequence of changes in the elevation of Pyramid Lake. This subsection reflects a unique and important compromise and opportunity for cooperation among Federal, tribal, and environmental interests. This subsection expressly incorporates the Anaho Island National Widlife Refuge into the Pyramid Lake Indian Reservation. This subsection, in recognition of the consent evidenced by a resolution adopted by the Pyramid Lake Paiute Tribal Council, provides that all of Anaho Island is to be managed as an integral unit of the National Wildlife Refuge System. It is the Committee's intent that the Anaho Island National Wildlife Refuge established under this subsection shall exist in perpetuity, subject only to further act of Congress. The Committee expects the Secretary, acting through the Director of the United States Fish and Wildlife Service, to continue to manage the refuge in accordance with the requirements of the National Wildlife Refuge System Administration Act. This subsection authorizes the Secretary to enter into cooperative agreements with the Pyramid Lake Tribe concerning the management and administration of the Anaho Island National Wildlife Refuge. The Committee, while recognizing the unique circumstances concerning the establishment and management of the refuge, notes that this provision is not intended to modity the primary management responsibilities of the Director of the United States Fish and Wildlife Service mandated by the National Wildlife Refuge System Administration Act or create a precedent for other areas.

As used in paragraph 210(b)(16), the term "address" is intended to mean actions chosen by the Secretary to remedy significant adverse impacts on the quality and quantity of groundwater within the Newlands Project. Such actions may include, but are not limited to domestic water system feasibility studies, provision of municipal wells, use of surface water storage and conveyance facilities, construction of requisite treatment facilities and the installation of appropriate works. The Committee would note that groundwater problems related to fuel spills, trace-metal mobilization, poorly-drained soils, and nutrient pollution already exist throughout the Newlands Project area. According to a recent report by the United States Geological Survey, the area's groundwater "commonly exceeds the drinking water standards for arsenic, chloride, dissolved solids, fluoride, iron, manganese and sulfate." While some of these problems may well be alleviated by the water right acquisitions authorized by this title, it is clear that, in the long-run, the communities and residents of the Newlands Project area must develop alternatives to their current reliance on induced irrigation recharge as a predominant source of domestic water supply. Plainly, the area's problems result from causes far broader than the Secretary's possible actions under this title, and the Secretary is provided no authority under this title to address any problems other than those

directly attributable to such actions. The Committee urges all interested parties to work together to achieve reasonable and timely solutions. If proposals are developed which require local cost-sharing, the Committee encourages the Secretary and local interests to consider whether contribution to the Secretary of irrigation water rights in excess of those required to sustain an integrated municipal and industrial water supply system could meet some portion, or all, of the local cost-sharing obligation.

Paragraph 210(b)(13) is intended to protect the Newlands Project's water rights and other vested and perfected rights under the *Orr Ditch* and *Alpine* decrees. The Committee was advised by representatives of the Truckee-Carson Irrigation District and State of Nevada that this language satisifed fully the requirements of recent legislation passed by the Nevada legislature (Nev. Rev. Stat. 704.230) concerning installation of water meters in the Truckee Meadows and protection of Newlands Project water rights.

Paragraph 210(b)(17) grants Sierra Pacific Power Company a limited waiver from Federal Power Act jurisdiction for the purpose of uprating generators at four pre-1935 run-of-river hydroelectric plants located on the Truckee River. The waiver granted by this subsection does not apply to changes or improvements that would adversely affect the environment or water regime on the Truckee River. The Committee expects that the Secretary will take fully into account the monetary value of this waiver to Sierra Pacific in developing appropriate charges for Sierra Pacific's use of Stampede Reservoir. This provision is without financial cost to the Federal government that should increase the sums that the Secretary can reasonably expect to obtain from Sierra Pacific for using Stampede Reservoir, thereby benefiting the fund established under subsection 206(f).

Subsection 210(c) authorizes appropriation of such sums as may be required to implement this legislation.

Legislative History

Title II is a substantially revised version of S. 1554, legislation introduced by Senator Reid on August 4, 1989. The Select Committee on Indian Affairs and the Subcommittee on Water and Power of the Committee on Energy and Natural Resources held a hearing on S. 1554 on February 6, 1990. (S. Hrg. 101–669).

Committee Tabulation and Recommendation of Vote

The Select Committee on Indian Affairs, in open business session on September 25, 1990, by unanimous vote, recommends that the Senate pass S. 3084, with an amendment.

Cost and Budgetary Considerations

The cost estimate of S. 3084, as amended, as evaluated by the Congressonal Budget Office, is set forth below:

Regulatory Impact Statement

Paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the

regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that S. 3084, as amended, will have minimal regulatory or paperwork impact.

EXECUTIVE COMMUNICATIONS

The Committee received the following communication from the Secretary of the Department of the Interior on S. 3084 on September 25, 1990:

SECRETARY OF THE INTERIOR,
Washington, DC, September 25, 1990.

Hon. DANIEL K. INOUYE,
Chairman, Select Committee on Indian Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This letter conveys the views of the Department of the Interior on S. 3084, the "Fallon Paiute-Shoshone Indian Tribe Water Rights Settlement Act of 1990" (hereinafter, the "Fallon settlement"). Additionally, it is our understanding that the Select Committee may incorporate into S. 3084 the full text of the "Truckee-Carson-Pyramid Lake Water Rights Settlement Act" as marked up as Title VII of H.R. 2567 by the Senate Energy and Natural Resources Committee on September 19, 1990 (hereinafter, Title VII). This letter conveys our comments on Title VII as well.

With the size of the $50 million economic development fund for the Pyramid Lake Paiute Tribe as provided in Title VII and the $48 million cost of the proposed Fallon settlement, the financial obligations in this bill far exceed the legal liabilities of the United States. I could not recommend that the President sign an enrolled bill unless the dollar amount is substantially reduced.

In addition to the funding level for Fallon, the Department has a number of objections to the manner in which the funds would be expended. First, we are concerned that the construction and rehabilitation on any irrigation projects financed by the funds might be uneconomic; second, we oppose any per capita distribution of the funds; third, we do not understand the rationale for limiting the areas for which the Fallon Tribe could use settlement funding; and fourth, we oppose the Secretary's retention of liability for the future integrity of a trust fund.

Regarding Pyramid Lake, I reiterate that the Department strongly opposed the figure of $20 million that had been proposed in recent staff drafts of S. 1554 (the precursor of Title VII of H.R. 2567) for an economic development fund for the Pyramid Lake Tribe and the limitations that only claims for monetary damages against the United States be released for access to the fund. In markup last week, the Senate Energy and Natural Resources Committee incorporated S. 1554 into H.R. 2567 and raised the amount for the economic development fund to $50.0 million. The Administration proposed $5 million for such a fund on the basis that it be conditioned on a release of ". . . any and all claims . . . prior to the date of enactment of this Act, including but not limited to claims of failures to enforce the Endangered Species Act or other Federal laws."

In considering this legislation, it is important to remember that it is *not* an Indian water rights settlement. The claims of the Pyramid Lake Paiute Tribe were settled in the *Orr Ditch* decree, and the decree of that court is confirmed in this legislation. The tribe was fully compensated in 975 by the United States for claims that were not asserted in the *Orr Ditch* litigation.

This legislation deals with the resolution of various competing demands for the limited waters of the Tahoe, Truckee, and Carson Basins. The Pyramid Lake Tribe has an interest, obviously, in that allocation but does not have water rights at issue. The Pyramid Lake Tribe is the incidental beneficiary of the United States interest in an adequate supply of water for the endangered and threatened species that reside in Pyramid Lake and, in fact, is in opposition to the United States concerns for adequate water supplies for the fish and wildlife in the Lahontan Valley. The legislation, for example, would require water conservation at the Fallon Naval Air Station and redirect the conserved water to Pyramid Lake, a result that the tribe sought in recent litigation and which the courts rejected.

The previously proposed $20 million was considered excessive considering what little is being settled by way of litigation in the legislation and in consideration of the substantial benefits that would accrue to the tribe through implementation of the bill. Our concerns are as follows:

1. The court cases listed in H.R. 2567 to be resolved do not present significant legal issues or commitment of significant resources in their defense. Three of the four are inactive or near conlcusion.

2. Any claim on the part of the Pyramid Lake Tribe for recoupment of water illegally diverted by the Truckee-Carson Irrigation District (TCID) is weak, considering that it has no defined water right compromised by the diversion.

3. The United States, however, may have a claim, independent from any claim on behalf of the tribe, for water restitution due to violation of the United States contract with TCID and pursuant to the Endangered Species Act.

4. The amount of money is out of propotion to any possible recovery by the tribe.

The Pyramid Lake Tribe benefits significantly from the many other provisions of the current draft of Title VII of H.R. 2567. Specifically,

the tribe's Orr Ditch decree claims would be ratified by statute, thereby protecting against any claims of abandonment (the tribe is not exercising all of its current irrigation rights);

additional water in Pyramid Lake would result from the conservation measures that would be required in the Reno-Sparks area including installation of water meters, a conservation pricing program, and a conservation plan;

there would be benefits to the Pyramid Lake fishery from the relinquishment by Sierra-Pacific of single purpose water rights for hydropower and the conversion of current water rights used for drought protection in the Reno-Sparks area to fishery credit water;

water conserved at the Fallon Naval Air Station would be transferred to Pyramid Lake;

the use of Stampede Reservoir for fishery benefits would be guaranteed by statute, and operations at a second reservoir (Presser Creek) also would likely provide fishery benefits;

a water rights purchase program for Pyramid Lake would be authorized;

the fishery would benefit from half the receipts of the Lahontan Valley and Pyramid Lake Fish and Wildlife Fund;

revenues from a $25 million fisheries fund would be provided to the tribe for fishery restoration and development;

operating criteria and procedures to conserve water in the Newlands Project are legislatively confirmed as ceilings;

the probability of recovering water to compensate for illegal diversions is enhanced by the incentives provided in Title VII, Section 709, for a settlement with TCID;

Pyramid Lake may receive substantial amounts of additional water as a result of the conversion of water rights for wetlands use at less than their irrigation entitlement;

the amount of water that can be diverted from the Truckee River by California is limited by statute;

the trust status of the reservation is confirmed by statute;

enforcement authority over fish and wildlife resources is confirmed by statute; and

the bill includes provisions under which the tribe could obtain a water right to all unappropriated water in the Truckee River and, if it is not satisfied on this issue, it can veto the interstate water allocation provided in Section 704 of H.R. 2567 and the Operating Agreement provided by Section 705.

Based upon the above, the Department believes that the Pyramid Lake Tribe would be a net beneficiary of this legislation without any monetary settlement.

Additionally, it should be noted that the Federal Government has already contributed substantially to the Pyramid Lake Tribe and the fishery. This includes,

an $8.5 million payment to the tribe in 1975 to settle the issue of failure to assert a water right claim on behalf of the tribe's interest in the fishery;

converting Stampede Dam and Reservoir, an approximately $22 million facility, from it original multipurpose planned use to a nearly exclusive use for enhancing or allowing fish spawning runs;

financing three Pyramid Lake Tribe hatcheries at a cost of approximately $5 million and continuing to provide hatchery and other fishery program costs over a 15-year period with a current annual cost of $1 million per year;

providing 83 percent of the fish production from the Lahontan National Fish Hatchery since 1978 at a curent annual cost of approximately $280,000;

preparing two recovery plans (1980 and 1983) and initiating work on a third using the research results and experience gained under the first two;

building Marble Bluff dam and fish ladder at a Federal cost of $7.6 million which, though not sufficiently satisfactory from the standpoint of the ladder, has made spawning runs possible;

adopting the Operating Criteria and Procedures for the Newlands Project to assure greater efficiency on the Newlands Project and, in turn, increase flows in the Lower Truckee River and into Pyramid Lake; and

provision of attorney and expert witness fees to the tribe in support of its litigation efforts, including suits against the United States in several instances.

These measures have not yet achieved the level of protection we hope to provide for the endangered cui-ui and the threatened Lahontan cutthroat trout. For that reason, the Administrtion is prepared to become a party to the Preliminary Settlement Agreement after appropriate environmental compliance, is conducting a study of how to improve Truckee River Delta access, and is developing the new cui-ui recovery plan. That plan, when completed, will undoubtedly require additional actions of benefit to the endangered species. The authorities we are requesting in Section 707 will assist in implementing such a plan. In short, much has and is being done to recover the cui-ui and improve the status of the Lahontan cutthroat trout, and we expect continued progress.

All of the discussion above related to a $20 million economic development fund is valid for what is now proposed as a $50 million fund. We would, however, like to comment on the economics of the arguments made in favor of a larger fund. First, item 3 above is most important. The United States may pursue any claims it has for water recoupment. Thus, that issue is not being settled, and the tribe could, if a court finds in favor of recoupment claims of the United States or if a recoupment agreement with the irrigators is reached, end up being paid twice—once by the United States in cash and once in water by the irrigators.

Second, the allegation has been made that replacement water would cost $1,000 to $2,000 per acre-foot. That cost, however, (a) is high compared to going rates for water rights, and (b) is based on water rights, not water. The range of the price quoted is about twice or more above going rates and represents a water right in perpetuity—that is an amount received every year—rather than a one-time recoupment.

Third, the Bureau of Reclamation has made a preliminary estimate of about 825,000 acre-feet in illegal diverisons. Additional work would be necessary to turn that number into a finding. The amount of water believed to be diverted could change substantially. The tribe has no serious basis for a claim of 1 million acre-feet.

Finally, any recovery by the tribe would be for monetary damages based on fishery losses and would bear no relationship to water prices. There is certainly no reasonable basis for valuing the loss at $50 million.

I hope the above discussion is helpful in improving S. 3084 and Title VII of H.R. 2567. The Department stands ready to assist in this endeavor. However, I reiterate that I cannot recommend enactment of S. 3084 or Title VII of H.R. 2567 in its current form.

The Office of Management and Budget advises that there is no objection to the submission of this report and that enactment of S.

3084 and Title VII of H.R. 2567 would not be in accord with the program of the President.

A similar letter is being sent to the Honorable John McCain, Ranking Minority Member, Select Committee on Indian Affairs.

Sincerely,

MANUEL LUJAN, JR.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the Committee is required to set forth the changes in existing law effected by S. 3084. In the Committee's view, S. 3084 does not effect any changes in existing law.

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